

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JENNIFER DOLD, ET AL.,

CASE NO. 2:20-cv-00383-JHC

**Plaintiffs,**

MEMORANDUM OPINION RE: CROSS MOTIONS FOR SUMMARY JUDGMENT

V.

## SNOHOMISH COUNTY, ET AL.,

## Defendants.

II

## INTRODUCTION

This case arises from a tragic and fatal interaction between two Snohomish County Sheriff deputies, deputy Cody McCoy and deputy Bryson McGee, and Alexander Dold. Following a struggle between the deputies and Mr. Dold—during which the deputies tased Mr. Dold, applied a chokehold, and used other means of force—Mr. Dold died. Plaintiffs Jennifer Dold (Mr. Dold’s sister, acting in her capacity as the representative of Mr. Dold’s estate) and Kathy Duncan (Mr. Dold’s mother, acting in her personal capacity) sued deputy McGee, deputy McCoy, and Snohomish County. Plaintiffs assert causes of action under 42 U.S.C. § 1983 and under Washington state law. *See* Dkt. # 50 (operative complaint).

1                   The parties filed five motions for summary judgment or partial summary judgment. Dkt.  
 2 ## 58, 61, 63, 67, 75. On December 9, 2022, the Court issued an order stating its conclusions on  
 3 each of those five motions. Dkt. # 134. The Court:

- 4                   (1) Denied Plaintiffs' Motion for Partial Summary Judgment on the Negligent  
                   Retention Claim. Dkt. # 58.
- 5                   (2) Granted in part and denied in part Plaintiffs' Motion for Partial Summary  
                   Judgment on Causation and Color of Law Elements of the Excessive Force  
                   Claim. Dkt. # 61. The Court granted the motion as to the "color of law"  
                   element of the claim but denied it as to the "causation" element of the claim.
- 6                   (3) Denied Plaintiffs' Motion for Partial Summary Judgment on the Warrantless  
                   Entry Claim. Dkt. # 63.
- 7                   (4) Granted in part and denied in part the deputies' Motion for Summary  
                   Judgment. Dkt. # 67. The Court granted the motion as to the warrantless entry  
                   claim but denied the motion as moot as to the wrongful death claim and the  
                   state law qualified immunity argument.
- 8                   (5) Granted in part and denied in part the County's Motion for Summary  
                   Judgment. Dkt. # 75. The Court granted the motion as to the failure to train  
                   claims (both the *Monell* claim and the right to companionship claim). The  
                   Court denied the motion as to the negligent retention claim.

14                  *Id.* In that order, the Court said that it would issue a separate memorandum opinion explaining  
 15 the reasoning behind its conclusions. This is the Court's memorandum opinion.

## 16                  II

### 17                  BACKGROUND

18                  On March 21, 2017, Alexander Dold was living with his mother, Kathy Duncan, at their  
 19 home in Snohomish, Washington. Dkt. # 63 at 2. Mr. Dold was 29 years old and had twice been  
 20 hospitalized for schizophrenia. *Id.* at 2–3. That evening, Mr. Dold and Ms. Duncan got into an  
 21 argument when he insisted that she owed him money. *Id.* As detailed below, Mr. Dold became  
 22 angry, hitting Ms. Duncan in the face and shoving her on the couch. Mr. Dold then left for  
 23

1 several hours. During that period, Ms. Duncan concluded that Mr. Dold needed to be admitted to  
 2 a hospital in order to get back on his medications. *Id.* at 3.

3 Mr. Dold then returned to the house, left again to get a snack from a local gas station, and  
 4 then returned to the house a second time around 9 p.m. *Id.* Ms. Duncan called the Snohomish  
 5 County Department of Mental Health and asked them to send a mental health professional to  
 6 evaluate Mr. Dold, but the Department refused to do so. *Id.* They told her to call 911 instead.  
 7 Ms. Dold went to a nearby store, where she called 911. *Id.*

8 Ms. Duncan told the 911 operator about the nature of the situation. She told the operator:  
 9 that her son had not taken his medication, that he was “tossing around the house tonight,” that he  
 10 “just went over the line,” that he gave Ms. Duncan “a fat lip,” that he “hit [her],” and that he  
 11 could have “done more damage than he did.” Dkt. # 76 at 19–20, 25 (911 transcript); *see also id.*  
 12 at 27 (“[Y]ou don’t throw your mom around the house and hit her.”). But Ms. Duncan also  
 13 explained that she wanted the officers to take Mr. Dold to the hospital, explained that Mr. Dold  
 14 “was calm now,” that she wanted the deputies to approach without sirens, and that nobody  
 15 needed emergency aid. *Id.* at 20–22. She told the 911 operator that she was returning to the  
 16 home. *Id.* at 23. However, it appears undisputed that many of the details provided by Ms.  
 17 Duncan during the 911 call were not conveyed to the deputies.

18 Deputies Bryson McGee and Cody McCoy received information a little after 9 p.m. from  
 19 police radio dispatching them to a “physical domestic” altercation. Dkt. # 64 at 32. The  
 20 dispatcher told the deputies that there was a “male verbal and physical” at the house. Dkt. # 76  
 21 at 29. The dispatcher added that “RP [reporting person] is advising source is mental and off  
 22 meds, requests a silent approach.” *Id.* The dispatcher told the deputies that the “[s]uspect will be  
 23 Alexander Dold, last seen in the house. RP left the house to call and thinks suspect will take off  
 24 if he knows RP called.” *Id.* The deputies also recall being told that “a male and a female were

1 physical" and that "the male was schizophrenic or something and off his medication and the  
 2 mom . . . had requested that he go for a psych eval." Dkt. # 64 at 32. Deputy McGee testified  
 3 that he was told that Ms. Duncan was returning to the home. *Id.* at 43–44. Deputy McGee also  
 4 stated that he knew that Mr. Dold "assaulted his mother," that he "hadn't been on his  
 5 medication," that he had "some kind of mental item going on," and that Ms. Duncan wanted Mr.  
 6 Dold to be taken to the hospital. *Id.* at 50–51. But the deputies could not recall whether they  
 7 knew if Mr. Dold was armed or if there was an ongoing fight inside the home. *Id.* at 54.

8         About 30 minutes after the 911 call, the deputies arrived at the home and approached the  
 9 front door. Dkt. # 63 at 4. Neither deputy recalls hearing any noise (aside from ambient  
 10 background noise) coming from the house. Dkt. # 64 at 49, 123. The deputies knocked on the  
 11 door. The deputies said "[s]omething to the effect of 'police.'" *Id.* at 55. Mr. Dold then opened  
 12 the door. According to deputy McGee, Mr. Dold opened the door "only a couple of feet . . . it  
 13 wasn't wide open and it wasn't closed," and stood inside the house "by the threshold" of the  
 14 door. *Id.* at 59.

15         Deputy McGee explained to Mr. Dold that they had been dispatched because Ms. Duncan  
 16 had called about him. Dkt. # 63 at 6. Deputy McGee asked if he could "come in and talk to [Ms.  
 17 Duncan]." Dkt. # 64 at 69. Mr. Dold declined, responding "something to the effect of 'she's  
 18 fine.'" *Id.* Deputy McGee says that he could not see Ms. Duncan, nor could he confirm whether  
 19 she was hurt or needing help. But he says that he heard Ms. Duncan say, "I'm here" in a  
 20 "fearful, afraid, [and] scared" manner. *Id.* at 67; *see also* Dkt. # 76 at 88–89 (deputy McCoy  
 21 observing that Ms. Duncan "looked scared"). During the interaction, deputy McGee asked Mr.  
 22 Dold to step outside the home. Dkt. # 64 at 75. Mr. Dold declined: "No, I'll talk to you from  
 23 here." *Id.* at 127. Both deputies testified that Mr. Dold admitted to having shoved Ms. Duncan  
 24 on the couch earlier that day. *Id.* at 71. Unlike deputy McGee, deputy McCoy testified that he

1 could see Ms. Duncan through the window and that he observed her talking on the phone. *Id.* at  
 2 126. Deputy McCoy added that deputy McGee asked if Ms. Duncan could “come out,” but Mr.  
 3 Dold told the officers “no, she’s not coming out.” Dkt. # 76 at 85.

4 At some point, Mr. Dold “started to kind of shut the door.” Dkt. # 64 at 72. As Mr. Dold  
 5 tried to close the door, deputy McGee put his foot “on the doorjamb” to prevent it from closing.  
 6 *Id.* at 74. The deputies applied additional pressure to force the door open. The deputies then  
 7 entered the home and declared that Mr. Dold was under arrest. *Id.*

8 At this point in the encounter, the parties’ descriptions of events begin to diverge. The  
 9 deputies testified that Mr. Dold punched deputy McGee in the face “right as [he] was stepping in  
 10 or at that point in the threshold of the door.” *Id.* at 83. Deputy McGee also testified that Mr.  
 11 Dold tried to grab the deputy’s gun “a few times.” *Id.* at 86. Plaintiffs dispute this, suggesting  
 12 that Mr. Dold did not punch the deputies or try to grab their guns (and more generally, Plaintiffs  
 13 assert that Mr. Dold’s resistance to arrest was far less than the deputies claim). Deputy McCoy  
 14 fired a taser dart (which hit Mr. Dold in the chest), and a fight between the deputies and Mr.  
 15 Dold ensued. Dkt. # 63 at 10.

16 Mr. Dold then “turned around and made a run for a back bedroom,” and both deputies  
 17 followed him. Dkt. # 64 at 87. Once in the bedroom, the deputies found Mr. Dold on the bed  
 18 (the parties dispute Mr. Dold’s exact positioning on the bed, and whether that positioning was  
 19 threatening or in preparation of a fight). *Id.* at 89. The deputies contend that Mr. Dold began  
 20 thrashing and flailing, “swinging his arms and kicking his feet” in a manner that made contact  
 21 with deputy McGee “a few times.” *Id.* at 92–93. Deputy McGee fired his taser. Deputy McGee  
 22 placed his knee on Dold’s cheek to pin his head to the ground and applied “closed fist strikes to  
 23 his face.” Dkt. # 63 at 11.

1 Sometime during the struggle, Mr. Dold made it to his feet, and the parties moved back  
 2 toward the porch. *Id.* Deputy McGee then tried to apply a chokehold called a “lateral vascular  
 3 neck restraint” (LVNR) in order to render him unconscious. *Id.* Though Mr. Dold did lose  
 4 consciousness, he began to regain consciousness as deputy McCoy tried to apply restraints to Mr.  
 5 Dold. At that point, the deputies began to apply additional physical pressure to Mr. Dold. They  
 6 placed their body weight on him, maintained some form of a chokehold, hit Mr. Dold with a  
 7 baton, and bent his fingers back. *Id.* at 11–12. (The parties strenuously dispute the nature of the  
 8 physical force applied, including the duration of the chokehold and the way the deputies applied  
 9 their body weight). Taser logs show that deputies McGee and McCoy each deployed their tasers  
 10 three separate times during the incident. Dkt. ## 63 at 12; 64 at 148–85.

11 Backup officers eventually arrived at the scene. Mr. Dold required immediate medical  
 12 assistance. Mr. Dold was pronounced dead later that night.

13 The parties strenuously dispute the “cause” of Mr. Dold’s death. *See generally* Dkt. ##  
 14 61, 88, 99, 101. Different experts opined that some combination of factors—including a  
 15 preexisting heart condition (resulting in an “enlarged heart”), the strenuous physical nature of the  
 16 altercation, and the various forms of force applied to Mr. Dold—led to severe “metabolic  
 17 acidosis.” *See, e.g.*, Dkt. # 61 at 2–9. This metabolic acidosis, in turn, led to sudden cardiac  
 18 arrest and death.

19 **III**

20 **DISCUSSION**

21 A. Summary Judgment Standard

22 A court may grant summary judgment if the movant shows that “there is no genuine  
 23 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
 24 R. Civ. P. 56(a). The evidence must be viewed in the light most favorable to the nonmoving

1 party, and all reasonable inferences should be drawn in the nonmoving party's favor. *Anderson*  
 2 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *see also Nelson v. City of Davis*, 571 F.3d 924,  
 3 927 (9th Cir. 2009) (“All justifiable inferences must be drawn in Nelson’s favor, and we must  
 4 deny summary judgment if any rational trier of fact could resolve an issue in his favor.”). A  
 5 court does not weigh evidence, but “only determine[s] whether there is a genuine issue for trial.”  
 6 *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994). “Where the moving party will have the  
 7 burden of proof on an issue at trial, the movant must affirmatively demonstrate that no  
 8 reasonable trier of fact could find other than for the moving party.” *Soremekun v. Thrifty  
 9 Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).

10 B. Excessive Force Claims

11 Plaintiffs assert two causes of action under 42 U.S.C. § 1983 based on the deputies’  
 12 alleged use of excessive force against Mr. Dold. *See* Dkt. # 50 at 12–13. First, Plaintiffs assert  
 13 an excessive force claim under the Fourth Amendment. Second, Ms. Duncan asserts a due  
 14 process claim for her loss of companionship as a product of the deputies’ use of excessive force.  
 15 For purposes of this order, there is no distinction between the two, so the Court considers them  
 16 the claims together.

17 Plaintiffs move for partial summary judgment as to two elements of their excessive force  
 18 claims: (1) that the deputies “caused” Mr. Dold’s injury (satisfying the causation element of a  
 19 section 1983 excessive force claims) and (2) that the deputies acted under the “color of law.”  
 20 *See* Dkt. # 61. The Court denies the motion as to the causation element of the excessive force  
 21 claims but grants the motion as to the “color of law” element.

22 1. Causation

23 Plaintiffs seek partial summary judgment as to the “causation” element of their excessive  
 24 force claims. Dkt. ## 61, 101. In response, the deputies argue that it was Dold’s alleged

1 resistance during the arrest process that “caused” his death, not the deputies’ actions.<sup>1</sup> *See* Dkt.  
 2 # 88 (deputies’ response); Dkt. # 99 (County’s response). This is so, the deputies say, because  
 3 Mr. Dold’s resistance led to physical exertion, which in turn produced the “metabolic acidosis”  
 4 that caused his heart failure. *See* Dkt. # 88 at 3–4. Because this is a motion brought by  
 5 Plaintiffs, the Court construes all facts in favor of the non-moving deputies. *Anderson*, 477 U.S.  
 6 at 255. The Court denies the motion as to the causation element.

7 “In a § 1983 action, the plaintiff must also demonstrate that the defendant’s conduct was  
 8 the actionable cause of the claimed injury.” *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026  
 9 (9th Cir. 2008). “To meet this causation requirement, the plaintiff must establish both causation-  
 10 in-fact and proximate causation.” *Id.*; *see also Arnold v. IBM Corp.*, 637 F.2d 1350, 1355 (9th  
 11 Cir. 1981); *Van Ort v. Est. of Stanewich*, 92 F.3d 831, 837 (9th Cir. 1996). “The proximate  
 12 cause question asks whether the unlawful conduct is closely enough tied to the injury that it  
 13 makes sense to hold the defendant legally responsible for the injury.” *Mendez v. Cty. of Los*  
 14 *Angeles*, 897 F.3d 1067, 1076 (9th Cir. 2018) (citing Prosser and Keeton on Torts § 42 (5th ed.  
 15 1984)). And “the touchstone of proximate cause in a § 1983 action is foreseeability.” *Id.* “A  
 16 requirement of proximate cause thus serves, *inter alia*, to preclude liability in situations where the  
 17 causal link between conduct and result is so attenuated that the consequence is more aptly  
 18 described as mere fortuity.” *Paroline v. United States*, 572 U.S. 434, 445 (2014).

19 The Court concludes that in this case, causation is a factual question that is properly left  
 20 to the jury. *See Soremekun*, 509 F.3d at 984 (“Where the moving party [as here] will have the  
 21  
 22  
 23  
 24

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<sup>1</sup> While Plaintiffs’ motion anticipated that the deputies would respond to the motion by arguing that Mr. Dold’s preexisting heart condition “caused” his death, *see* Dkt. # 61, the deputies did not rely on this argument in their response brief.

1 burden of proof on an issue at trial, the movant must affirmatively demonstrate that no  
 2 reasonable trier of fact could find other than for the moving party.”).

3 The causation inquiry asks whether the alleged constitutional violation (here, excessive  
 4 force) was both a cause-in-fact (but-for cause) and a proximate cause of a plaintiff’s injury. But  
 5 answering the causation inquiry now would put the cart before the horse. The causation element  
 6 asks only if an officer’s *unlawful* conduct caused a plaintiff’s injury. Before addressing the  
 7 causation inquiry, then, a jury must determine which aspects of the deputies’ conduct, if any,  
 8 were unlawful. This presents a factual question for the jury. The struggle between Mr. Dold and  
 9 the deputies lasted several minutes, and the deputies employed varying (and disputed) amounts  
 10 of force throughout the encounter. For example, the deputies tased Mr. Dold several times, but  
 11 also applied a chokehold, struck him with their hands and batons, and used different forms of  
 12 restraints. It is difficult to determine whether the deputies’ alleged wrongful conduct “caused”  
 13 Mr. Dold’s death without knowing which act or acts, if any, the jury finds to be excessive in the  
 14 first place. To be sure, a reasonable jury could conclude that the interaction as a *whole* (or in  
 15 aggregate) led to Mr. Dold’s death. But that must be decided by the factfinder. The causation  
 16 question is inextricably linked to the excessive force question.<sup>2</sup>

17 Even if Plaintiffs could show as a matter of law that the deputies’ alleged unlawful  
 18 conduct was a cause-in-fact of Mr. Dold’s injuries, Plaintiffs would still need to satisfy the  
 19 proximate cause requirement. Proximate cause is almost always a question of fact left for a jury.  
 20 *See, e.g., Tahoe Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 34 F.3d 753, 756 (9th  
 21 Cir. 1994) (noting in the context of a § 1983 claim that “a question of causation is preeminently a  
 22 question of fact, to be decided after trial”); *Beard v. Mighty Lift, Inc.*, 224 F. Supp. 3d 1131,

23  
 24 <sup>2</sup> The Court also believes that a jury may be confused if told that it must find causation as a  
 matter of law before it has determined what conduct, if any, was excessive.

1 1136 (W.D. Wash. 2016) (“[P]roximate cause is ordinarily a jury question.”); *Terpin v. AT&T*  
 2 *Mobility, LLC*, 399 F. Supp. 3d 1035, 1043 (C.D. Cal. 2019) (same); *King v. United States*, 756  
 3 F. Supp. 1357, 1360 (E.D. Cal. 1990) (same). While “the court may determine proximate cause  
 4 on summary judgment if reasonable minds could reach only one conclusion,” *see Beard*, 224 F.  
 5 Supp. 3d at 1136, courts tend to do so only when holding that proximate cause *is not* satisfied as  
 6 a matter of law. The parties cite no case in which a court granted a *plaintiff’s* motion for  
 7 summary judgment as to causation in a Section 1983 case. A jury is best equipped to evaluate  
 8 whether any alleged resistance by Mr. Dold severed the causal chain between the deputies’  
 9 actions and Mr. Dold’s injury.

10 While the Court is denying Plaintiffs’ motion, the Court emphasizes that it will carefully  
 11 instruct the jury about the law of causation and damages as necessary. Defendants’ arguments  
 12 inaccurately suggest that if Mr. Dold’s resistance was a cause-in-fact of Mr. Dold’s death, then  
 13 the deputies’ conduct cannot also be a cause-in-fact of his death. But an injury can have multiple  
 14 but-for causes and multiple proximate causes. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731,  
 15 1739 (2020) (“[O]ften events have multiple but-for causes.”); Dan B. Dobbs et al., *The Law of*  
 16 *Torts* § 196, p. 625 (2d ed. 2011) (“It is by no means true that the but-for test reduces everything  
 17 to a single cause. In fact, there are always many causes that meet the but-for test.”); *Staub v.*  
 18 *Proctor Hosp.*, 562 U.S. 411, 420 (2011) (“[I]t is common for injuries to have multiple  
 19 proximate causes.”). If appropriate, the Court will instruct the jury as such. And the Court will  
 20 instruct the jury about the law of damages, as appropriate. *See, e.g., Caruso v. Solorio*, No.  
 21 115CV780AWIEPGPC, 2021 WL 22498, at \*26 (E.D. Cal. Jan. 4, 2021) (“[T]he eggshell skull  
 22 doctrine, i.e. the defendant takes his victim as he finds him, is a recognized theory in § 1983  
 23 cases.”); *Richman v. Sheahan*, 512 F.3d 876, 884 (7th Cir. 2008).

24 2. Color of Law

1 Plaintiffs seek summary judgment on the “under color of law” element of their excessive  
 2 force claims. Dkt. # 61. A plaintiff in a § 1983 action must prove that “a person acting under  
 3 color of state law committed the conduct at issue.” *Leer v. Murphy*, 844 F.2d 628, 632 (9th Cir.  
 4 1988); *see also* 42 U.S.C. § 1983. The parties agree that the deputies were acting under the color  
 5 of state law when they responded to the 911 call—in their capacity as sheriff deputies—and  
 6 engaged in a struggle with Mr. Dold. The deputies agree. *See* Dkt. # 88 at 1 (“Defendants’ [sic]  
 7 do not deny they acted under color of law.”). Accordingly, the Court grants Plaintiffs’ motion  
 8 for partial summary judgment as to the “color of state law” element of their 1983 claims.

9           3.     Excessive Force

10           The Court emphasizes that Plaintiffs’ excessive force-related claims are all still in play; a  
 11 jury will need to decide whether the deputies used excessive force under the circumstances.  
 12 Portions of the County’s brief (and to a lesser extent, the deputies’ brief) could be read to suggest  
 13 that Defendants seek a determination that the deputies’ conduct was permissible as a matter of  
 14 law. *See, e.g.*, Dkt. # 75 at 14–17. But there are numerous disputes of material fact that preclude  
 15 such a judgment. Most notably, the parties strenuously debate the nature and severity of the  
 16 deputies’ use of force. Accordingly, if Defendants are seeking an order as to the excessive force  
 17 element of Plaintiffs’ § 1983 claim, that request is denied.

18           C.     Warrantless Entry Claim

19           The parties cross-move for summary judgment on Plaintiffs’ warrantless entry claim.  
 20 Dkt. # 63 (Plaintiffs’ Motion); Dkt. # 67 at 9–18 (deputies’ motion). Plaintiffs assert that the  
 21 deputies’ entry violated the Fourth Amendment and that the deputies are not entitled to qualified  
 22 immunity. The deputies respond that exceptions to the Fourth Amendment’s warrant  
 23 requirement justify their entry. And even if not, the deputies say, they are entitled to qualified  
 24 immunity.

1 It is a close question whether the deputies violated the Fourth Amendment through their  
 2 warrantless entry, particularly when the facts are viewed in the light most favorable to Plaintiffs  
 3 (as they must for purposes of the deputies' motion). But the Court need not resolve that question  
 4 because, even viewing the facts in the light most favorable to Plaintiffs, the deputies are entitled  
 5 to qualified immunity: No case law "clearly establishes" that warrantless entry in these  
 6 circumstances would be unconstitutional. Accordingly, the Court grants the deputies' motion  
 7 and denies Plaintiffs' motion.

8       1.     Qualified Immunity Legal Framework

9       When resolving a motion for summary judgment based on qualified immunity, courts  
 10 "engage in a two-step inquiry." *Peck v. Montoya*, 51 F.4th 877, 887 (9th Cir. 2022) (citing *Tolan*  
 11 *v. Cotton*, 572 U.S. 650, 655 (2014) (per curiam)). First, courts ask "whether the facts, viewed in  
 12 the light most favorable to the plaintiff, demonstrate that the deputies violated a constitutional  
 13 right." *Id.* Second, courts ask "whether that right was 'clearly established' at the time of the  
 14 alleged constitutional violation." *Id.* While the Supreme Court had once required courts to  
 15 evaluate these questions sequentially, *see generally Saucier v. Katz*, 533 U.S. 194 (2001), it has  
 16 since clarified that courts may answer the questions in either order. *See Pearson v. Callahan*,  
 17 555 U.S. 223, 236 (2009). Thus, a court may grant an officer qualified immunity on the "clearly  
 18 established" prong without directly deciding whether a constitutional violation occurred.

19       2.     Constitutional Violation Prong

20       The first prong of the qualified immunity analysis asks whether, viewing the facts in the  
 21 light most favorable to the nonmoving party, the state actor violated a constitutional right. *Peck*,  
 22 51 F.4th at 887. The constitutional right at issue is the Fourth Amendment's protection from  
 23 unreasonable searches and seizures.

1           The Fourth Amendment protects “[t]he right of the people to be secure in their persons,  
 2 houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV.  
 3 The “physical entry of the home is the chief evil against which the wording of the Fourth  
 4 Amendment is directed.” *Payton v. New York*, 445 U.S. 573, 585 (1980) (quoting *United States  
 5 v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972)). “It is ‘a basic principle of Fourth Amendment  
 6 law that searches and seizures inside a home without a warrant are presumptively  
 7 unreasonable.’” *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (quoting *Groh v.  
 8 Ramirez*, 540 U.S. 551, 559 (2004)). “A warrantless entry into a home violates the Fourth  
 9 Amendment unless an exception to the Fourth Amendment warrant requirement applies, such as  
 10 emergency, exigency, or consent.” *Espinosa v. City & Cnty. of San Francisco*, 598 F.3d 528,  
 11 533 (9th Cir. 2010). The deputies entered the home without a warrant. But the deputies assert  
 12 that these exceptions to the warrant requirement—the consent, emergency aid, and exigent  
 13 circumstances exceptions—excuse their warrantless entry.

14                   a.        Consent Exception

15           Valid consent provides an exception to the Fourth Amendment’s warrant requirement.  
 16 *Georgia v. Randolph*, 547 U.S. 103, 109 (2006); *Bonivert v. City of Clarkston*, 883 F.3d 865, 874  
 17 (9th Cir. 2018). The deputies contend that they received either express or implied consent from  
 18 Ms. Duncan to enter the home. Dkt. # 86 at 6–8.

19           The Court rejects this argument. Nothing in the transcript between Ms. Duncan and the  
 20 911 operator amounts to an express statement that she wished for the deputies to come into her  
 21 home. Nor did Ms. Duncan communicate such a desire while the deputies stood at the doorstep  
 22 of the home. And of course, Mr. Dold did not provide express consent; to the contrary, Mr.  
 23 Dold’s behavior indicated that he did not consent to the entry of the officers.

1           The deputies contend in the alternative that Ms. Duncan's 911 call—during which she  
 2 requested police assistance to manage Mr. Dold—provided implied consent to enter the home.  
 3 Dkt. # 86 at 7–8. But they cite no federal case law suggesting that the mere act of calling 911  
 4 and requesting assistance authorizes any subsequent intrusion into the home, no matter what the  
 5 officers observe when they arrive at the scene. The 911 transcript suggests only that Ms. Duncan  
 6 wanted the police to come to her home, perhaps to chat with Mr. Dold at the door or evaluate the  
 7 situation further. There is no sign that Ms. Duncan impliedly granted the deputies an  
 8 unconditional license to *enter* her home even if—as Plaintiffs suggest—the deputies arrived at a  
 9 quiet home with no signs of distress.

10           But even assuming the 911 call provided consent, Supreme Court precedent forecloses  
 11 the deputies' argument. In *Georgia v. Randolph*, one tenant of a home consented to a police  
 12 entry and search while a co-tenant—who was also physically present at the home—objected.  
 13 The Court held that “a physically present co-occupant's stated refusal to permit entry prevails,  
 14 rendering the warrantless search unreasonable and invalid as to him.” 547 U.S. at 106; *see also*  
 15 *id.* at 122–23 (“[A] physically present inhabitant's express refusal of consent to a police search is  
 16 dispositive as to him, regardless of the consent of a fellow occupant.”). Applying *Randolph* in a  
 17 similar domestic violence context, the Ninth Circuit has held that “[e]ven though the officers  
 18 secured [one party's] consent, [Plaintiff] was physically present inside and expressly refused to  
 19 permit the officers to enter on two different occasions,” meaning that “the consent exception to  
 20 the warrant requirement did not justify the officers' entry into [Plaintiff's] home.” *Bonivert*, 883  
 21 F.3d at 875.

22           Accordingly, even if Ms. Duncan somehow consented to the warrantless entry, Mr.  
 23 Dold's objection to the warrantless entry—as shown by his words and actions while standing at  
 24

1 the door of the home—renders the entry unreasonable as to him.<sup>3</sup> The consent exception does  
 2 not apply.

3                   b.        State Law

4                   The deputies point to Washington state law to justify their warrantless entry. Dkt. # 88 at  
 5 9–11. They point to statutes that stress the importance of protecting victims in domestic violence  
 6 situations. *See* Revised Code of Washington (RCW) 99.030(5) (“The primary duty of peace  
 7 officers, when responding to a domestic violence situation, is to enforce the laws allegedly  
 8 violated and protect the complaining party.”). They also point to a state statute requiring an  
 9 officer to arrest any individual who the officer believes assaulted a family or household member  
 10 in the previous four hours. *See* RCW 10.31.100(2)(d).

11                  But any state statute or police policy cannot require conduct that violates the United  
 12 States constitution. Such a statute would itself be unconstitutional and must yield to federal law.  
 13 *Cf. Garner v. Tennessee*, 471 U.S. 1, 11 (1985) (state statute which authorized the use of deadly  
 14 force to arrest a fleeing felon regardless of the circumstances was unconstitutional as applied  
 15 when the fleeing felon did not pose a danger to anyone). The deputies seem to recognize this  
 16 point. Dkt. # 86 at 9 (“Defendant Deputies acknowledge that Washington Law does not control  
 17 the Court’s interpretation of the Fourth Amendment.”). Accordingly, state law cannot justify a  
 18 warrantless entry that otherwise violates the Fourth Amendment.

19                   c.        Exigency and Emergency Aid Exceptions

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 22                  <sup>3</sup> *Randolph* emphasizes that its holding does not prevent the police from entering a dwelling over  
 23 the objection of a physically present co-tenant to investigate domestic violence. 547 U.S. at 118. But this  
 24 language suggests not that consent would exist in such circumstances, but that some other justification—  
 say, exigent or emergency circumstances—might permit entry. The Court discusses those exceptions to  
 the warrant requirement below.

1           “There are two general exceptions to the warrant requirement for home searches: exigency  
 2 and emergency.” *Hopkins v. Bonvicino*, 573 F.3d 752, 763 (9th Cir. 2009) (quoting *United States  
 3 v. Martinez*, 406 F.3d 1160, 1164 (9th Cir.2005)).

4           “The emergency aid exception permits law enforcement officers to ‘enter a home without  
 5 a warrant to render emergency assistance to an injured occupant or to protect an occupant from  
 6 imminent injury.’” *Bonivert*, 883 F.3d at 876 (quoting *Brigham City*, 547 U.S. at 403). “An  
 7 entry pursuant to the emergency aid exception is ‘reasonable’ under the Fourth Amendment,  
 8 regardless of the individual officer’s state of mind, as long as the circumstances, viewed  
 9 objectively, justify [the] action.” *Id.* (internal quotation marks and citation omitted). Courts  
 10 assess whether the emergency aid exception applies based on the totality of the circumstances.  
 11 *Hopkins*, 573 F.3d at 764.

12           The exigent circumstances exception “applies when the exigencies of the situation make  
 13 the needs of law enforcement so compelling that a warrantless search is objectively reasonable  
 14 under the Fourth Amendment.” *Missouri v. McNeely*, 569 U.S. 141, 148–49 (2013) (quoting  
 15 *Kentucky v. King*, 563 U.S. 452, 460 (2011)). “[W]hen the government relies on the exigent  
 16 circumstances exception, it . . . must satisfy two requirements: first, the government must prove  
 17 that the officer had probable cause to search the house; and second, the government must prove  
 18 that exigent circumstances justified the warrantless intrusion.” *United States v. Johnson*, 256  
 19 F.3d 895, 905 (9th Cir. 2001) (en banc). “As a general rule, we define exigent circumstances as  
 20 those circumstances that would cause a reasonable person to believe that entry . . . was necessary  
 21 to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the  
 22 escape of the suspect, or some other consequence improperly frustrating legitimate law  
 23 enforcement efforts.” *Id.* (citation omitted).

24           The Ninth Circuit has described the difference between the two exceptions as follows:

1       The “emergency” exception stems from the police officers’ “community  
 2       caretaking function” and allows them “to respond to emergency situations” that  
 3       threaten life or limb; this exception does “not [derive from] police officers’  
 4       function as criminal investigators.” By contrast, the “exigency” exception does  
 5       derive from the police officers’ investigatory function; it allows them to enter a  
 6       home without a warrant if they have both probable cause to believe that a crime  
 7       has been or is being committed and a reasonable belief that their entry is  
 8       “necessary to prevent . . . the destruction of relevant evidence, the escape of the  
 9       suspect, or some other consequence improperly frustrating legitimate law  
 10       enforcement efforts.”

11       *Hopkins*, 573 F.3d at 763 (citations and quotation marks omitted); *see also Espinosa*, 598 F.3d at  
 12       534.

13       But the distinction between the two exceptions largely fades away (or at the very least  
 14       becomes typologically confusing) when the primary exigency or emergency justifying  
 15       warrantless entry is, as here, the risk of physical harm to another person following an alleged  
 16       assault. An imminent threat to another fits within the emergency aid exception; this is the core  
 17       purpose of the exception. But it is less clear that risk of harm to another falls under the exigency  
 18       label as well. The Ninth Circuit sometimes lists “harm to others” as an exigency, *see United*  
 19       *States v. Struckman*, 603 F.3d 731, 743 (9th Cir. 2010), while at other times omits this example  
 20       from its list of exigencies, *see Bonivert*, 883 F.3d at 878. In domestic violence cases, the Ninth  
 21       Circuit has sometimes focused on the exigent circumstances exception, *see United States v.*  
 22       *Black*, 482 F.3d 1035, 1039 (9th Cir. 2007), sometimes focused on the emergency aid exception,  
 23       *see United States v. Martinez*, 406 F.3d 1160, 1164 (9th Cir. 2005) (holding that the exigent  
 24       circumstances exception did not justify entry but that the emergency aid exception did), and  
 25       sometimes applied both, *see Bonivert*, 883 F.3d at 876–79. Further adding to the doctrinal  
 26       confusion, the Supreme Court has described law enforcement’s obligation to provide emergency  
 27       aid as a *type* of exigency justifying warrantless entry. *See, e.g., Lange v. California*, 141 S. Ct.  
 28       2011, 2017 (2021) (describing “emergency assistance” as a type of “exigenc[y]”).

1           But regardless of the framework applied, the inquiry is essentially the same in  
 2 circumstances like these. *Cf. Black*, 482 F.3d at 1041 n.1 (noting that the ““objective  
 3 reasonableness’ test [of the emergency aid exception] is essentially the same as the one courts  
 4 use to determine whether police action is justified under the ‘exigent circumstances’ exception,”  
 5 and so applying either test would yield the same result). Where, as likely here, there was  
 6 probable cause to believe that a crime had been committed (satisfying prong one of the exigent  
 7 circumstances test),<sup>4</sup> the inquiry boils down to whether there was an objectively reasonable  
 8 exigency or emergency (like a threat to Ms. Duncan) that would lead a reasonable officer to enter  
 9 the home without a warrant. If so, then the deputies’ warrantless entry did not violate the Fourth  
 10 Amendment. But if there was no such exigency or emergency, then the Fourth Amendment  
 11 would prohibit the entry.

12           Whether an exigency or emergency justified the deputies’ entry presents a close question.  
 13 The Ninth Circuit has explained that domestic violence cases do not “create a per se exigent need  
 14 for warrantless entry.” *United States v. Brooks*, 367 F.3d 1128, 1136 (9th Cir. 2004). At the  
 15 same time, “the exigencies of domestic abuse cases present dangers that, in an appropriate case,  
 16 may override considerations of privacy.” *Id.* “Courts have recognized the combustible nature of  
 17 domestic disputes, and have accorded great latitude to an officer’s belief that warrantless entry  
 18 was justified by exigent circumstances when the officer had substantial reason to believe that one  
 19 of the parties to the dispute was in danger.” *Id.* (quoting *Tierney v. Davidson*, 133 F.3d 189, 197  
 20 (2d Cir. 1998)).

21  
 22  
 23           <sup>4</sup> The deputies likely had probable cause to conclude that Mr. Dold committed some form of  
 24 assault or battery under Washington law. The dispatcher told the deputies that there had been a physical  
 dispute, and Mr. Dold admitted to the deputies that he had shoved his mother.

1       Here, facts cut in both directions. On the one hand, the deputies were dispatched to  
 2 respond to a “verbal and physical” domestic abuse situation. Dkt. # 76 at 29. Mr. Dold also told  
 3 the deputies that he had shoved his mother earlier, confirming that there had been some form of a  
 4 physical dispute that might require intervention. Dkt. # 63 at 7. In light of the combustible  
 5 nature of domestic violence disputes, *see Brooks*, 367 F.3d at 1136, the deputies could have  
 6 believed that entry was necessary to prevent future violence. *See Michigan v. Fischer*, 558 U.S.  
 7 45, 49 (2009) (“Officers do not need ironclad proof of a likely serious, life-threatening injury to  
 8 invoke the emergency aid exception.” (citation and quotation marks omitted)); *United States v.*  
 9 *Brown*, 64 F.3d 1083, 1086 (7th Cir. 1995) (“We do not think that the police must stand outside  
 10 an apartment, despite legitimate concerns about the welfare of the occupant, unless they can hear  
 11 screams.”). And the deputies knew that the victim remained in the home but could not make  
 12 meaningful contact with her. *Martinez*, 406 F.3d at 1164 (“When the domestic violence victim is  
 13 still in the home, circumstances may justify an entry pursuant to the exigency doctrine.”);  
 14 *Brooks*, 367 F.3d at 1135. This fact distinguishes the case from those in which the Ninth Circuit  
 15 held that exigent circumstances did not justify entry after reports of domestic violence. *See, e.g.*,  
 16 *Bonivert*, 883 F.3d at 877–88 (finding a Fourth Amendment violation when the alleged victim  
 17 was already outside the house, meaning there was no objectively reasonable risk of bodily harm  
 18 to another person). And even if the deputies observed a relatively calm home when they arrived  
 19 on the scene, officers need not “witness ongoing violence before responding to an emergency.”  
 20 *United States v. Snipe*, 515 F.3d 947, 952 n.6 (9th Cir. 2008). Such a requirement would be  
 21 inconsistent “not only with the purposes underlying the emergency doctrine but also with  
 22 *Brigham City*’s express statement that police officers do not have to wait for violence before  
 23 acting.” *Id.* (citing *Brigham City*, 126 S. Ct. at 1949).

1           On the other hand, viewing the facts in the light most favorable to Plaintiffs, the home  
 2 was quiet and calm when the deputies arrived. There was no yelling, and there were no signs of  
 3 a violent struggle. While the deputies contend that Ms. Duncan “sounded scared” when she said,  
 4 “I’m here” from within the residence, Dkt. # 67 at 2, a reasonable jury could disbelieve the  
 5 deputies’ account. And the mere fact that Mr. Dold closed the door on the deputies to end the  
 6 encounter does not justify warrantless entry. An “occupant has no obligation to open the door or  
 7 to speak.” *King*, 563 U.S. 452 at 469–70. And “even if an occupant chooses to open the door  
 8 and speak with the officers,” “the occupant need not allow the officers to enter the premises and  
 9 may refuse to answer any questions at any time.” *Id.* at 470. The deputies also point to several  
 10 statements made by Ms. Duncan during her 911 call. Ms. Duncan told the 911 dispatcher that  
 11 Mr. Dold gave her a “fat lip,” “hit [her],” and that she was “afraid to have [Dold] with me.” Dkt.  
 12 # 86 at 14; Dkt. # 76 at 19–20, 25, 27. But there is no indication that these details were ever  
 13 conveyed to the deputies by the 911 dispatcher. Because the reasonableness of the deputies’  
 14 actions “is to be judged by the circumstances known to them,” *Black*, 482 F.3d at 1038, such  
 15 facts cannot support the lawfulness of the deputies’ conduct.

16           But the Court need not resolve this question. Even if the deputies violated the Fourth  
 17 Amendment when they entered the home without a warrant, they are entitled to qualified  
 18 immunity, as described below. No case law “clearly establishes” that under similar  
 19 circumstances, entry into the house to protect a potential victim of domestic violence would  
 20 violate the Fourth Amendment.

21           3.       “Clearly Established” Prong

22           The second prong of the qualified immunity analysis asks whether the constitutional right  
 23 was “clearly established” at the time of the alleged constitutional violation. *Peck*, 51 F.4th at  
 24 887. A right is “clearly established” if a court can “identify a case where an officer acting under

similar circumstances . . . was held to have violated” the Constitution. *White v. Pauly*, 580 U.S. 73, 137 S. Ct. 548, 552 (2017) (per curiam). An officer “cannot be said to have violated a clearly established right unless the right’s contours were sufficiently definite that any reasonable official in [his] shoes would have understood that he was violating it.” *City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 611 (2015) (quoting *Plumhoff v. Rickard*, 572 U.S. 765, 778-79 (2014)). While there need not be “a case directly on point for a right to be clearly established, existing precedent must have *placed the statutory or constitutional question beyond debate.*” *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7–8 (2021) (per curiam) (emphasis added) (quoting *White v. Pauly*, 137 S. Ct. at 551); *see also Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018). The Supreme Court has described the “clearly established” test as creating an “exacting standard” that “gives government officials breathing room to make reasonable but mistaken judgments.” *Sheehan*, 575 U.S. at 611 (internal quotation marks and citation omitted). To that end, qualified immunity “protects ‘all but the plainly incompetent or those who knowingly violate the law.’” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

The Supreme Court has also “repeatedly told courts . . . not to define clearly established law at a high level of generality.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam) (quoting *al-Kidd*, 563 U.S. at 742). “The dispositive question is ‘whether the violative nature of *particular* conduct is clearly established.’” *Id.* (quoting *al-Kidd*, 563 U.S. at 742). This inquiry “must be undertaken in light of the specific context of the case, not as a broad general proposition.” *Id.* (citation and internal quotation marks omitted). “[S]pecificity is especially important in the Fourth Amendment context, where . . . it is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer

1 confronts.” *Rivas-Villegas*, 142 S. Ct. at 8 (quoting *Mullenix*, 577 U.S. at 12) (first two  
 2 alterations in original).

3 Here, Plaintiffs do not point to case law that “clearly establishes” that the deputies’ entry  
 4 was unconstitutional under similar circumstances to those present in this case. As the discussion  
 5 above illustrates, it is a close question whether the deputies’ warrantless entry violated the Fourth  
 6 Amendment. In these scenarios—where reasonable minds could come to different conclusions  
 7 about the lawfulness of the deputies’ conduct—qualified immunity shields officers from liability.  
 8 *See Mitchell v. Forsyth*, 472 U.S. 511, 535 n.12 (1985) (“[I]n cases where there is a legitimate  
 9 question whether an exception to the warrant requirement exists, it cannot be said that a  
 10 warrantless search violates clearly established law.”); *al-Kidd*, 563 U.S. at 743 (qualified  
 11 immunity “protects all but the plainly incompetent or those who knowingly violate the law.”  
 12 (citation and quotation marks omitted)).

13 Even viewing the facts in the light most favorable to the Plaintiffs (as the Court must for  
 14 purposes of the deputies’ motion for summary judgment based on qualified immunity), a  
 15 reasonable jury could find these facts: (1) the deputies were dispatched to respond to a 911 call  
 16 reporting a “physical domestic” dispute; (2) the deputies arrived to a calm home without yelling  
 17 or overt indication of an immediate emergency or distress; (3) the victim was still in the home;  
 18 (4) the deputies were unable to meaningfully interact with the victim due to the suspect’s actions;  
 19 and (5) the suspect admitted to shoving the victim earlier. There does not appear to be any case  
 20 law that would put “any reasonable officer” on notice that warrantless entry here would violate  
 21 the Fourth Amendment. *Sheehan*, 575 U.S. at 611 (emphasis added) (citation omitted).

22 Plaintiffs point to a number of cases which stand for the general proposition that domestic  
 23 violence does not create exigent circumstances per se. *See, e.g., Black*, 482 F.3d at 1040 (“[W]e  
 24 have stopped short of holding that ‘domestic abuse cases create a per se exigent need for

warrantless entry”’); *Brooks*, 367 F.3d at 1136 (“We do not suggest that domestic abuse cases create a per se exigent need for warrantless entry”). Plaintiffs also cite cases that state that a search of the home absent a warrant or exigent circumstances is presumptively unreasonable. *See, e.g., Brigham City*, 547 U.S. at 403. But these statements describe the right at too high a level of generality: They provide little guidance to officers about what conduct violates the Fourth Amendment. While these cases suggest that officers may not enter a home upon the mere mention of the words “domestic violence,” they do describe the factual circumstances that might justify or preclude such an entry.

Plaintiffs rely heavily on *Bonivert v. City of Clarkson*. 883 F.3d 865. But that case is readily distinguishable and does not clearly establish the contours of the right at issue. In *Bonivert*, the victim of the reported domestic abuse was already *outside* the home when the officers arrived. *See id.* at 875 (“[I]t is important to underscore that neither [the alleged victim] nor the baby were in danger because they were safely outside the house when police entered.”). There was no objectively reasonable justification to enter the home because there could be no imminent threat to the victim; the victim was safely separated from the alleged attacker. By contrast, Ms. Duncan was still in the home, and the deputies could not meaningfully communicate with her because Mr. Dold actively prevented the deputies from speaking to Ms. Duncan. Plaintiffs also rely on *Cuervas v. De Roco*. 531 F.3d 726 (9th Cir. 2008). But that case involves warrantless entry in an attempt to locate a parolee. Unlike here, there is no suggestion that the officers in that case entered the home to protect a person who had recently reported domestic abuse.

In short, Plaintiffs identify no case in which a court has held unconstitutional a warrantless entry when a potential victim of domestic violence is still in the house, the responding officers cannot meaningfully communicate with the victim, and the suspect actively

1 prevents access to the victim. To the contrary, Ninth Circuit cases can be read to imply that  
 2 when a victim of domestic violence is still inside the home and there remains a credible risk of  
 3 violence, warrantless entry may be appropriate. In *Brooks*, for example, the court stated that  
 4 “[w]hen the domestic violence victim is still in the home, circumstances may justify an entry  
 5 pursuant to the exigency doctrine.” 367 F.3d at 1135. And in *Black*, the court found the  
 6 emergency aid exception justified the warrantless entry because—as here—the deputies did not  
 7 know the extent of the emergency or the scope of the risk posed to the victim. 482 F.3d at 1035,  
 8 1039; *see also United States v. Wilder*, 187 F.3d 650 (9th Cir. 1999) (unpublished) (“We have  
 9 little doubt that the 911 call reporting the ‘physical domestic’ dispute, the substance of which  
 10 Officer Link verified upon arrival, was sufficient to create exigent circumstances.”).

11 To be sure, Plaintiffs are no doubt correct that the facts in those cases are somewhat  
 12 distinguishable from those here. In *Brooks*, for example, the court upheld a warrantless entry in  
 13 part because the officers observed a room in disarray, and in *Black*, the court did the same  
 14 because the officers could not locate the alleged victim.<sup>5</sup> At most, however, these cases might  
 15 help clarify the type of conduct that *is* permissible; they shed little light on the line at which an  
 16 officer’s conduct crosses from lawful to unlawful. They do not put every reasonable officer on  
 17 notice that a warrantless entry under these circumstances—when a domestic violence victim is in  
 18 the house and the officers cannot meaningfully communicate with the victim—violates the  
 19 Constitution.

20 Moreover, case law tends to emphasize that officers are given significant leeway when  
 21 responding to domestic violence disputes. “Courts have recognized the combustible nature of  
 22

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23 <sup>5</sup> During the 911 call in *Black*, however, the victim indicated that she would wait for the officers  
 24 *outside* the home. 482 F.3d at 1039–40. Even so, the court held that the warrantless entry was  
 permissible, even though it was very likely—based on the 911 call—that the victim was *not* inside the  
 home. *Id.*

1 domestic disputes, and have accorded great latitude to an officer's belief that warrantless entry  
 2 was justified by exigent circumstances when the officer had substantial reason to believe that one  
 3 of the parties to the dispute was in danger." *Brooks*, 367 F.3d at 1136 (quoting *Tierney*, 133 F.3d  
 4 at 197). When officers respond to a report of domestic violence, "violence may be lurking and  
 5 explode with little warning." *Martinez*, 406 F.3d at 1164 (citation omitted). And in *Georgia v.*  
 6 *Randolph*, the Supreme Court stated: "No question has been raised, or reasonably could be,  
 7 about the authority of the police to enter a dwelling to protect a resident from domestic violence;  
 8 so long as they have good reason to believe such a threat exists, it would be silly to suggest that  
 9 the police would commit a tort by entering." 547 U.S. at 118. In fact, the Ninth Circuit has  
 10 observed that "[t]wo other circuits have even held that a 911 call reporting a domestic  
 11 emergency, without more, may be enough to support a warrantless search of a home." *Brooks*,  
 12 367 F.3d at 1136 (citing *United States v. Richardson*, 208 F.3d 626, 630 (7th Cir. 2000) and  
 13 *United States v. Cunningham*, 133 F.3d 1070, 1072–73 (8th Cir.1998)); *Martinez*, 406 F.3d at  
 14 1164–65. ("[O]ther circuits have recognized the need for law enforcement officers to enter a  
 15 home without a warrant when it appears that the occupant may injure himself or others."). An  
 16 officer reading these cases could reasonably—if erroneously—conclude that warrantless entry is  
 17 permissible so long as the alleged victim remains in the home and the officers cannot speak with  
 18 him or her.

19 Ultimately, the "clearly established" inquiry creates an "exacting standard." *Sheehan*,  
 20 575 U.S. at 611 (internal quotation marks and citation omitted). While many have criticized the  
 21 doctrine, the Supreme Court has made clear in recent years that qualified immunity protects "all  
 22 but the plainly incompetent or those who knowingly violate the law." *al-Kidd*, 563 U.S. at 743  
 23 (citation omitted). Unless the law puts the constitutionality of the deputies' conduct "beyond  
 24 debate," an officer is entitled to qualified immunity. *Rivas-Villegas*, 142 S. Ct. at 7–8 (citation

1 omitted). In an edge case like this one, qualified immunity shields the deputies from liability. If  
 2 the deputies' warrantless entry violated the Fourth Amendment, they are still entitled to qualified  
 3 immunity.

4 D. Failure to Train Claims

5 The County moves for summary judgment as to Plaintiffs' "failure to train" claims. *See*  
 6 Dkt. # 75 at 9–18 (County's motion for summary judgment). Plaintiffs assert two causes of  
 7 action against the County based on a failure to train theory. First, Plaintiffs assert a direct claim  
 8 against the County for its alleged failure to train the deputies. Dkt. # 50 at 12. This is a type of  
 9 *Monell* claim, named after the Supreme Court case, *Monell v. Department of Social Services of*  
 10 *City of New York*, 436 U.S. 658 (1978). Second, Ms. Duncan asserts a due process claim against  
 11 the County, arguing that the County's failure to train deprived her of her right to companionship  
 12 with her son. Dkt. # 50 at 13. The Court grants the County's motion for summary judgment as  
 13 to both claims.

14 1. *Monell* Claim for Failure to Train

15 The County moves for summary judgment on Plaintiffs' *Monell* claim for failure to  
 16 adequately train the deputies. Dkt. # 75 at 9–18. In its motion, the County focuses on its  
 17 training program on the use of tasers. But in Plaintiffs' response brief, they state that their  
 18 *Monell* claim has nothing to do with tasers. *See* Dkt. # 110 at 1 ("[T]he failure to train claim is  
 19 not based on any contention that the County's Taser training was inadequate."); *id.* at 2 ("The  
 20 *Monell* claim has nothing to do with the training the County provided on Taser use."). Instead,  
 21 they state that the "*Monell* claim is based on failure to adequately train [the County's] deputies  
 22 on the use of a carotid chokehold (generally referred to as a Lateral Vascular Neck Restraint or  
 23 'LVNR')." *Id.* at 2; *see also id.* at 10 (same). In its reply brief, the County argues that this new  
 24 chokehold theory of liability does not appear in the complaint and was not disclosed to the

1 County; that the theory relies entirely on inadmissible expert opinions; that there is no evidence  
 2 that the chokehold training was inadequate; and that there is no evidence that the County was  
 3 deliberately indifferent to any deficiency in training. Dkt. # 119 at 1.

4 In order to hold a local government liable under § 1983, a plaintiff must prove that  
 5 “action pursuant to official municipal policy” caused their injury. *Monell*, 436 U.S. at 691.  
 6 “Official municipal policy includes the decisions of a government’s lawmakers, the acts of its  
 7 policymaking officials, and practices so persistent and widespread as to practically have the force  
 8 of law.” *Connick v. Thompson*, 563 U.S. 51, 61 (2011). While a local government’s failure to  
 9 adequately train its employees can amount to official government policy for purposes of § 1983  
 10 “in limited circumstances,” “[a] municipality’s culpability for a deprivation of rights is at its  
 11 most tenuous where a claim turns on a failure to train.” *Id.* Proof of inadequate training “does  
 12 not render the city liable [under §1983] per se.” *City of Canton v. Harris*, 489 U.S. 378, 388  
 13 (1989). Rather, “a municipality’s failure to train its employees in a relevant respect must amount  
 14 to ‘deliberate indifference to the rights of persons with whom the [untrained employees] come  
 15 into contact.’” *Connick*, 563 U.S. at 61 (quoting *City of Canton*, 489 U.S. at 388). “Only then  
 16 can such a shortcoming be properly thought of as a city ‘policy or custom’ that is actionable  
 17 under § 1983.” *Id.* (citation and quotation marks omitted). But “[d]eliberate indifference” is a  
 18 stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious  
 19 consequence of his action.” *Id.* (citation omitted).

20 Plaintiffs fail to satisfy this “stringent standard,” and the Court grants the County’s motion  
 21 for summary judgment as to the *Monell* claim. Plaintiffs rely heavily on a 2007 Canadian study  
 22 to show the inherent danger of the chokehold used by the deputies. That study states:

23 In cases of prolonged or extremely violent struggle, it could be possible for the  
 24 subject to get out of the correct position for application of an appropriate VNR.  
 In these cases, the intended VNR could become an arm bar or tracheal hold which

1 achieves loss of consciousness through asphyxia. For this reason, officers must  
 2 be taught and subsequently utilize the concept that if a subject is not rendered  
 3 unconscious within 30 seconds of application of the VNR, it is not working and is  
 4 either ineffective or not a VNR. In this case officers must consider tactically  
 5 repositioning or engaging in another sort of restraint/force option if the situation  
 6 allows.

7 Dkt. # 96-6 at 17. Construing all facts in the light most favorable to Plaintiffs, the deputies applied  
 8 a LVNR for longer than 30 seconds, the durational limit suggested by the study. Plaintiffs thus  
 9 contend that because the County was aware of this study, the County failed to adequately train its  
 10 deputies to limit the duration of LVNRs in accordance with the study's findings. But the study is  
 11 equivocal at best. Elsewhere, the study states:

12 [V]ascular neck restraint in North America has been heavily criticized for its  
 13 hypothesized immediate and devastating cardiopulmonary and neurological effects.  
 14 *None of those claims have been supported by known physiological effects of  
 15 transient carotid occlusion or by case reports, case studies, medical anecdote or  
 16 more formal medical research.*

17 Dkt. # 120-2 at 31 (emphasis added); *see also id.* (citing another study which "determined that  
 18 the effects of complete carotid occlusion were completely reversible even following 100 seconds  
 19 of complete vascular neck occlusion").

20 But even if the Court were to accept that the study stands for the proposition that use of  
 21 the LVNR for longer than 30 seconds would be unreasonably dangerous, Plaintiffs' own expert,  
 22 Dr. Harmening, appears to have conceded that he did not take issue with the County's training  
 23 about LVNRs. The following back-and-forth took place during Dr. Harmening's deposition:

24 Q. So do you know whether or not the Snohomish County Sheriff's Department utilized  
 25 the standardized training?

26 A. Yes.

27 Q. And they did; correct?

28 A. They did, yes.

1 Q. So Officer McGee would have been trained in the standard policy which everybody  
2 uses, which is in fact the industry standard for training; correct?  
3

4 A. I absolutely agree with that. They provided the module. It is the standardized module.  
5

6 Q. So the County didn't do anything wrong in training him according to industry standards,  
7 did they?  
8

9 A. No. I've never alleged that.  
10

11 Q. *So what did the County do wrong with regard to his training on lateral vascular neck*  
12 *restraint?*  
13

14 A. You're asking me something I have not opined on. *I'm saying it was Deputy McGee*  
15 *who did something wrong with the neck restraint, not the County.*  
16

17 Dkt. # 120-1 at 3–4 (emphasis added). Looking to Dr. Harmening's expert report leads to the  
18 same conclusion. Dr. Harmening opined that the deputies' application of the LVNR for  
19 (according to his calculations) three to four minutes was unreasonable given the medical  
20 evidence. Dkt. # 98-2 at 18. But nowhere in the report does he opine about the County's lack of  
21 training around the proper duration of an LVNR. To the contrary, in the only portion of the  
22 report that discusses the training provided to the deputies about the use of LVNRs, Dr.  
23 Harmening seems to suggest that the deputies *did* receive LVNR training, but that the deputies  
24 disregarded that training. *See* Dkt. # 98-2 at 17–18 (“McGee has completed training in the use of  
the LVNR,” but deputy McGee misapplied the LVNR); *id.* at 23 (stating his opinion that “the use  
of the lateral vascular neck restraint by McGee for an excessive duration and at a time when he  
was unable to properly position himself *pursuant to his training* was inappropriate and reckless.”)  
(emphasis added)); *cf. City of Canton*, 489 U.S. at 386 (noting that Section 1983 does not permit  
respondeat superior liability or vicarious liability for municipal governments). In the portion of  
25

1 the report that discusses the duration of the LVNR,<sup>6</sup> Dr. Harmering said nothing about the  
 2 County's training about LVNR duration, only that deputy McGee applied the LVNR for an  
 3 unreasonably dangerous duration. *See generally id.* at 18–19, 23. Plaintiffs have thus provided  
 4 no evidence that the County's training program was, in fact, deficient.

5       But even if Plaintiffs could rely on the study to show that the LVNR duration was  
 6 unreasonable, and even if the Plaintiffs could establish that the County's LVNR training could be  
 7 improved in some way, Plaintiffs' claim would still fail. This is because Plaintiffs have not  
 8 shown that the County exhibited "deliberate[] indifference to the rights of persons with whom  
 9 the police come into contact." *City of Canton*, 489 U.S. at 388. Plaintiffs have not pointed to a  
 10 "pattern" of constitutional violations, which is "ordinarily necessary to demonstrate deliberate  
 11 indifference for purposes of failure to train." *Connick*, 563 U.S. at 62 (citation and quotation  
 12 marks omitted). They have not shown, for example, that any shortcoming in the County's  
 13 training about LVNRs routinely led to constitutional violations, or that deputy sheriffs of  
 14 Snohomish County regularly use such tactics. Nor have they shown that any purported  
 15 deficiencies in the County's training program were so "patently obvious that a city could be  
 16 liable under § 1983 without proof of a pre-existing pattern of violations." *Id.* at 64. Ultimately,  
 17 establishing municipal liability—particularly on a failure to train theory—poses a very high bar.  
 18 *See Connick*, 563 U.S. at 61 (noting that the deliberate indifference standard creates a "stringent  
 19 standard"). Plaintiffs have not cleared that high bar here.<sup>7</sup>

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20       <sup>6</sup> In their brief, Plaintiffs clarify that they challenge only the adequacy of the County's training  
 21 about the proper duration of an LVNR. They do not challenge the County's training about the  
 22 appropriateness of the LVNR generally and "whether it was properly applied throughout the encounter."  
 23 Dkt. # 110 at 3. With respect to those issues, Plaintiffs state that Dr. Harmening opined only "that  
 24 McGee's conduct was inconsistent with his training on when and how to administer an LVNR," *id.*, not  
 that the training itself was inadequate.

7 The County also asks the Court for judgment in its favor on the failure-to-train claims because  
 the deputies' use of force was reasonable under the circumstances, and thus there was no constitutional

1 As a final note, the County observes in its reply brief that the LVNR-based theory put  
 2 forward by Plaintiffs in their response to the motion for summary judgment departs from the  
 3 theory outlined in the complaint, which focuses exclusively on the County's alleged failure to  
 4 train the deputies about proper use of their tasers. *See* Dkt. # 50 at 11–12 (discussing the  
 5 County's alleged failure to train the deputies about tasers). If a plaintiff wishes to rely on an  
 6 unpled theory at summary judgment, a plaintiff must either amend their complaint to include the  
 7 theory or "make known during discovery their intention to pursue" this new theory. *Coleman v.*  
 8 *Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000). Plaintiffs do not appear to have provided  
 9 such notice of their intent to pursue a new theory. But because Plaintiffs have not had an  
 10 opportunity to respond to this argument. And because the Court has resolved the *Monell* claim  
 11 on the merits, the Court declines to evaluate this argument.<sup>8</sup>

12 2. Deprivation of Ms. Duncan's Right to Companionship through the County's  
 13 Alleged Failure to Train

14 Ms. Duncan asserts a claim for violation of her "right to companionship of her son  
 15 through failure to train." Dkt. # 50 at 13. Based on the due process clause, the Ninth Circuit  
 16 recognizes that "a parent has a fundamental liberty interest in the companionship and society of  
 17 his or her child and that [t]he state's interference with that liberty interest without due process of  
 18 law is remediable under [42 U.S.C. §] 1983." *Lee v. City of Los Angeles*, 250 F.3d 668, 685 (9th  
 19 Cir. 2001) (citation and quotation marks omitted) (alterations in original).

20 violation. Dkt. # 75 at 14–17. *See Long v. City & Cnty. of Honolulu*, 511 F.3d 901, 907 (9th Cir. 2007)  
 21 ("If no constitutional violation occurred, the municipality cannot be held liable."). But there are countless  
 22 factual disputes that preclude such a conclusion. Most importantly, the parties vigorously dispute the  
 23 seriousness of the amount of force used and the extent to which Mr. Dold resisted arrest. This, in turn,  
 24 bears on the reasonableness of the force used by the deputies in response. Thus, the Court declines to  
 grant summary judgment on this basis.

<sup>8</sup> In its reply brief, the County seems to request that the Court strike Dr. Harmening's report as  
 inadmissible because it was submitted after the expert report deadline. Dkt. # 119 at 4–5. Plaintiffs have  
 not had an opportunity to respond to the County's admissibility argument. Because the Court has  
 addressed the *Monell* claim on the merits, it makes no decision about the admissibility of the report. And

1           This claim is derivative of Plaintiffs' broader failure to train claim against the County.  
 2 As discussed above, the County is entitled to summary judgment on that claim. Accordingly, the  
 3 Court grants the County's motion for summary judgment as to Ms. Duncan's "right to  
 4 companionship" claim based on the County's alleged failure to train.

5           E.      Negligent Retention Claim

6           Plaintiffs assert a state-law claim against the County for its negligent retention of deputy  
 7 McGee. The parties have cross-moved for partial summary judgment as to the negligent  
 8 retention claim. Dkt. # 58 (Plaintiffs' motion); Dkt. # 75 (County's motion). The Court  
 9 previously dismissed Ms. Dold's negligent retention claim because she failed to file a claim form  
 10 as required under Washington law. *See* Dkt. # 39 at 9. But Ms. Duncan's negligent retention  
 11 claim is still in play.<sup>9</sup>

12           The Court denies both motions for summary judgment. There are numerous disputes of  
 13 fact remaining, and the public duty doctrine does not bar the claim.

14           1.      Negligent Retention Standard

15           The Washington state legislature abolished state sovereign immunity in 1961 and did the  
 16 same for its political subdivisions in 1967. *Cummins v. Lewis Cnty.*, 156 Wash. 2d 844, 862, 133  
 17 P.3d 458 (2006) (Chambers, J., concurring). Under Washington law, a local government is liable  
 18 in tort "to the same extent as if [it] were a private person or corporation." RCW 4.96.010(1).

19           A negligent retention claim holds an employer liable when the employer negligently  
 20 elects to retain an employee and the employee then commits a wrongful act. To succeed on a  
 21 negligent retention claim, "a plaintiff must show that the employer had knowledge of the  
 22 employee's unfitness or failed to exercise reasonable care to discover unfitness before

23  
 24           

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<sup>9</sup> No party meaningfully addresses this claim specifically in reference to Ms. Duncan, instead  
 briefing the claim as to "Plaintiffs," collectively.

1        . . . retaining the employee.” *Anderson v. Soap Lake Sch. Dist.*, 191 Wash. 2d 343, 356, 423  
 2 P.3d 197 (2018) (citation omitted). The plaintiff must also show the employer’s retention of the  
 3 employee was a proximate cause of the plaintiff’s injuries. *Carlsen v. Wackenhut Corp.*, 73  
 4 Wash. App. 247, 252–53, 868 P.2d 882 (1994).

5            2.        Disputes of Material Fact

6        Plaintiffs argue that the County was negligent in retaining deputy McGee. Dkt. # 58.  
 7 According to Plaintiffs, deputy McGee has a history of conduct showing that he was unfit to  
 8 serve as a deputy. First, Plaintiffs allege that deputy McGee failed to create a report after an  
 9 individual reported the potential rape of a child. *Id.* at 3–4. Second, Plaintiffs allege that deputy  
 10 McGee was involved in a 2010 encounter that resulted in the death of an individual, Adam  
 11 Colliers; deputy McGee repeatedly deployed his taser and applied other forms of force in an  
 12 attempt to control Mr. Collier, ultimately leading to his death. *Id.* 5–10. Plaintiffs also identify  
 13 several other incidents involving deputy McGee, along with evidence that the County took  
 14 efforts to protect deputy McGee from the consequences of his actions. *See generally id.*  
 15 Plaintiffs argue that no reasonable law enforcement agency would have retained deputy McGee  
 16 after these incidents. *Id.* at 18. And if Snohomish County had fired McGee after any of these  
 17 incidents, Plaintiffs say, Mr. Dold may not have died. *Id.*

18        The County counters that deputy McGee’s alleged failure to submit a report for the child  
 19 rape incident is not “sufficient to establish Deputy McGee was unfit.” Dkt. # 97 at 13.  
 20 Similarly, the County argues that the only evidence introduced regarding the Adam Colliers  
 21 incident is that “the event occurred.” *Id.* at 14. The evidence does not, the County says,  
 22 establish that deputy McGee acted improperly, or that “the County had knowledge McGee was  
 23 unfit to be an officer.” *Id.* The County makes similar arguments about the other evidence  
 24 identified by Plaintiffs.

1           The descriptions of the facts relied on by each party illustrate the numerous disputes of  
 2 material fact that must be resolved by a jury. For example, a jury must resolve whether a  
 3 reasonable law enforcement agency would have retained deputy McGee after the Colliers  
 4 incident, the failure-to-report incident, and the other events cited by Plaintiffs. While breach of a  
 5 legal duty (that is, whether a defendant was negligent) can be resolved on summary judgment  
 6 when “reasonable minds could not differ” as to whether the defendant’s conduct was negligent,  
 7 “breach . . . [is] generally [a] question[] of fact for the jury.” *Briggs v. Pacificorp*, 120 Wash.  
 8 App. 319, 322–23, 85 P.3d 369 (2003). Here, a reasonable jury could arrive at different  
 9 conclusions about whether the County’s retention of deputy McGee was negligent. Disputes of  
 10 material fact preclude summary judgment for either party.

11           3.       Public Duty Doctrine

12           The County argues that the negligent retention claim is barred by the “public duty  
 13 doctrine.” Dkt. ## 75 at 19–21; 119 at 9–12. The Court disagrees.

14           “The public duty doctrine stands for a basic tenet of common law: ‘A cause of action for  
 15 negligence will not lie unless the defendant owes a duty of care to [the] plaintiff.’” *Ehrhart v.*  
 16 *King Cnty.*, 195 Wash. 2d 388, 398, 460 P.3d 612, 618 (2020) (quoting *Chambers-Castanes v.*  
 17 *King Cnty.*, 100 Wash.2d 275, 284, 669 P.2d 451 (1983)). “To establish a duty in tort against a  
 18 governmental entity, a plaintiff must show that the duty breached was owed to an individual and  
 19 was not merely a general obligation owed to the public.” *Beltran-Serrano v. City of Tacoma*,  
 20 193 Wash. 2d 537, 549, 442 P.3d 608 (2019). The doctrine “recognizes that governments, unlike  
 21 private persons, are tasked with duties that are not actionable duties within the meaning of tort  
 22 law.” *Id.* “The public duty doctrine guides a court’s analysis of whether a duty exists that can  
 23 sustain a claim against the government in tort.” *Ehrhart*, 195 Wash. 2d at 398.

1           The public duty doctrine has spawned confusion in both federal courts and the lower  
 2 courts of Washington. *See Cummins*, 156 Wash. 2d. at 861 (“[T]he public duty doctrine is now  
 3 regularly misunderstood and misapplied.”) (Chambers, J., concurring). But as Justice Chambers  
 4 explained in his concurrence in *Munich v. Skagit Emergency Communications Center*,<sup>10</sup> the  
 5 doctrine typically does *not* eliminate a government actor’s duty if that duty is based in common  
 6 law: “[T]he only governmental duties we have limited by application of the public duty doctrine  
 7 are duties imposed by a *statute, ordinance, or regulation*. This court has never held that a  
 8 government did not have a *common law* duty solely because of the public duty doctrine.” 175  
 9 Wash.2d 871, 886–87, 288 P.3d 328 (2012) (Chambers, J., concurring) (emphasis added).  
 10 “Because the legislature ha[s] declared that governments [are] to be liable for their tortious  
 11 conduct just like private persons or corporations, the public duty doctrine [is] not applied to  
 12 duties that governments ha[ve] in common with private persons.” *Munich*, 175 Wash. 2d at 888  
 13 (Chambers, J., concurring). Instead, the Washington Supreme Court has “recognized that the  
 14 public duty doctrine comes into play when special governmental obligations are imposed by  
 15 *statute or ordinance*.” *Beltran-Serrano*, 193 Wash. 2d at 549–50 (emphasis added); *see also*  
 16 *GRB v. City of Spokane*, No. 2:18-CV-264-RMP, 2019 WL 289812, at \*4 (E.D. Wash. Jan. 22,  
 17 2019) (“[T]he public duty doctrine does not apply to common law negligence claims; it only  
 18 applies to duties arising from statutes.”).

19           This makes sense. When a statute or ordinance imposes a duty on government actors, the  
 20 public does not generally share that duty. In such circumstances, the public duty doctrine steps  
 21 in to ensure that a government is liable in tort “to the *same* extent as if [it] were a private person  
 22 or corporation,” RCW 4.96.010(1) (emphasis added), but no *more* than a private person or

23  
 24           <sup>10</sup> “Justice Chambers’s concurring opinion [in *Munich*] is precedential because it received five  
 votes from justices who also signed the majority opinion.” *Beltran-Serrano*, 193 Wash. 2d at 550 n.8.

1 corporation. Indeed, “[t]he central purpose behind the public duty doctrine is to ensure that  
 2 governments do not bear greater tort liability than private actors.” *Beltran-Serrano*, 193 Wash.  
 3 2d at 549. Applying the public duty doctrine to cover all common law duties “would  
 4 inappropriately lead to a partial restoration of immunity by carving out an exception to ordinary  
 5 tort liability for governmental entities.” *Id.* at 550.

6 Here, Plaintiffs assert a common law claim based on the County’s negligent retention of  
 7 one of its employees, deputy McGee. The tort imposes a duty on an employer for negligently  
 8 deciding to retain an employee who then commits a wrongful act. This is not a duty imposed by  
 9 statute or ordinance; nor is it one imposed exclusively on government actors. It is a general,  
 10 common law duty shared by every employer: Like other employers, the County has a common  
 11 law duty to ensure that it reasonably selects its employees. *See, e.g., Betty Y. v. Al-Hellou*, 988  
 12 P.2d 1031, 1032–33 (Wash. Ct. App. 1999) (evaluating a negligent retention claim brought  
 13 against a private employer); *GRB*, 2019 WL 289812, at \*5 (“The determination of whether the  
 14 public duty doctrine bars a negligence claim turns on whether the duty which the plaintiff claims  
 15 the government defendant breached is one that a non-government person or entity could be liable  
 16 for as well.”); *Mita v. Guardsmark, LLC*, 182 Wash. App. 76, 84, 328 P.3d 962, 966 (2014)  
 17 (“[T]he public duty doctrine does not apply where, as here, a plaintiff alleges the public entity  
 18 breached a common law duty it shares in common with private entities.”). And like private  
 19 employers, the County can be held liable when its negligent workforce management leads to  
 20 harm. Because Plaintiffs assert a common law negligent retention claim that includes a duty  
 21 imposed on the government and the public alike, the claim is not barred by the public duty  
 22 doctrine. *See GRB*, 2019 WL 289812, at \*6 (“Because negligent hiring and training are two

1 duties that private persons and entities hold to other members of the public, the City of Spokane  
 2 is held to that duty as well.”).<sup>11</sup>

3 The Washington Supreme Court’s recent decision in *Beltran-Serrano v. City of Tacoma*  
 4 is instructive. In that case, the court held that the public duty doctrine did not bar a negligence  
 5 claim against law enforcement officers based on their handling of an interaction that led to the  
 6 use lethal force. The court reasoned that this presented a common law claim based on a common  
 7 law duty: “At common law, every individual owes a duty of reasonable care to refrain from  
 8 causing foreseeable harm in interactions with others.” *Id.* at 551. In light of the nature of the  
 9 claim and the fact that the officer had an “affirmative interaction” with the plaintiff, the court  
 10 held that “[t]he City therefore owed Beltran-Serrano a duty in tort to exercise reasonable care.”  
 11 *Id.* at 551–52.

12 The County correctly notes that the court in *Beltran-Serrano* declined to address the  
 13 application of the public duty doctrine to the plaintiff’s “negligence theory based on the City’s  
 14 training and supervision of its employees,” instead leaving that question for the superior court on  
 15 remand. *Id.* at 543 n.3. But it declined to address that question only because of the “the separate  
 16 certification order framing the issue for review does not reference th[ese] negligence claims.” *Id.*  
 17 To the extent that these other claims also arise out of a general common law duty applicable to  
 18 the public, the Court believes that the logic of *Beltran-Serrano* would similarly apply to other

19  
 20  
 21 <sup>11</sup> The County cites several federal district court cases applying the public duty doctrine to bar  
 22 negligent retention claims. *See, e.g., Shope v. City of Lynnwood*, 2011 WL 1154447, at \*6 (W.D. Wash.  
 23 Mar. 28, 2011); *Dowell v. City of Lynnwood*, No. C06-1240-JCC, 2007 WL 4365793, at \*7 (W.D. Wash.  
 24 Dec. 11, 2007); Dkt. # 119 at 10–12. But most of these decisions predate the Washington Supreme  
 Court’s more recent public duty case law (including *Beltran-Serrano* and Justice Chambers’s concurrence  
 in *Munich*), in which the court has emphasized that common law duties shared by all members of the  
 public are generally not barred by the public duty doctrine. In any event, these decisions are not binding  
 on this Court’s interpretation of Washington state law.

1 theories of negligence based on a local government's supervision of its employees and  
2 workforce.

3 Accordingly, the Court holds that the public duty doctrine does not bar the negligent  
4 retention claim. And because there are numerous disputes of material fact about whether the  
5 County negligently retained deputy McGee, the Court denies both Plaintiffs' and the County's  
6 motions for summary judgment on this claim.

7 F. Wrongful Death Claim

8 The deputies' motion for summary judgment seeks summary judgment for the wrongful  
9 claims. Dkt. # 67 at 18–24. They argue, among other things, that Plaintiffs' expert witness  
10 failed to provide a factual basis for his opinion that the Deputies caused Mr. Dold's death, and  
11 that Washington law provides immunity (i.e., state law qualified immunity) for officers who  
12 respond in good faith to a domestic violence incident. *Id.*

13 The Court has already dismissed these claims. The Court previously held that Ms. Dold's  
14 wrongful death claim is barred because she did not file a claim form, a statutory prerequisite to a  
15 wrongful death claim against a government or government employee under Washington law.  
16 See Dkt. # 39 (dismissing the claims as to the County); Dkt. # 132 (dismissing the claims as to  
17 the individual deputies). The Court also concluded that Ms. Duncan's wrongful death claim is  
18 barred because she lacks standing. See Dkt. # 39.

19 Therefore, the deputies' motion as to the wrongful death claim is moot.

20 **IV**

21 **CONCLUSION**

22 For the reasons above, and as set forth in the Court's previous order (Dkt. # 134), the  
23 Court rules as follows:

- 1 (1) Plaintiffs' Motion for Partial Summary Judgment on the Negligent Retention  
Claim, Dkt. # 58, is DENIED.
- 2 (2) Plaintiffs' Motion for Partial Summary Judgment on Causation and Color of  
3 Law Elements of the Excessive Force Claim, Dkt. # 61, is GRANTED in part  
and DENIED in part.
- 4 (3) Plaintiffs' Motion for Partial Summary Judgment on the Warrantless Entry  
5 Claim, Dkt. # 63, is DENIED.
- 6 (4) The deputies' Motion for Summary Judgment, Dkt. # 67, is GRANTED in part  
and DENIED in part as moot.
- 7 (5) The County's Motion for Summary Judgment, Dkt. # 75, is GRANTED in part  
8 and DENIED in part.

9 Dated this 29th day of December, 2022.

10 

11 John H. Chun  
12 United States District Judge